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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,193	08/29/2001	Kenneth M. Riff	P-9618.00	8485
27581 7590 04/04/2007 MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			EXAMINER LE, LINH GIANG	
			ART UNIT	PAPER NUMBER
			3626	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/04/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/943,193

Applicant(s)

RIFF ET AL.

Examiner

Michelle Linh-Giang Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 12, 13, 18-21, 32-34, 39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 12, 13, 18-21, 32-34, 39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to Amendment After Final filed 24 October 2005. Examiner notes that this application was transferred from the docket of another Examiner thus causing some delay in the response.

Double Patenting

2. Claims 1-7 of this application conflict with claim 1-7 of Application No. 10/828,545. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 1-7 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1-7 of copending Application No. 10/828,545. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell (6,249,705) in view of DiRienzo (6,006,191).

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6. As per claim 1 Snell teaches an internet-based method for a paid service to maintain data connectivity of a remote medical device-configured patient to a database network and to enable medical device data exchange and processing (Snell; Abstract), comprising the steps of:

receiving in a substantially continuous manner at a database network site first data inputs uniquely representative of sensed physiologic information from a specific medical device configuration of a patient using said medical device configuration (Snell; Col. 4, lines 42-51);

enabling the database network site to communicate with at least one web enabled web-site and to receive web-site originated signals requesting access to representations of said first data inputs from said database (Snell; Col. 6, lines 40-56);

Snell does not expressly teach monitoring data packages to determine revenue for the service. However, this is well known in the art as evidenced by Dirienzo. In particular, Dirienzo teaches a market place for continuously negotiated prices with control for certain medical services (Dirienzo; Col. 8, lines 31-37). It would have been obvious to add this feature to the Snell method with the motivation of having an open electronic marketplace for a medical service (Dirienzo; Col. 11, lines 50-60)

7. As per claim 2, Snell does not expressly teach the step of providing said web-site and configuring said web-site with a user interface which includes a sign-in input to enable access to said database network site.

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However this feature is an obvious variant of the Snell teachings. Snell does teach implementing appropriate security checks such as communications protocols, handshaking, and encryption in order to not compromise patient confidentiality (Snell; Col. 7, lines 51-54).

8. As per claim 3, Snell teaches the receiving step includes receiving at least one signal carrying Information representing sensed physiologic status within the patient from at least one medical device located on or at least partially in the patient's body (Snell; Col. 4, lines 42-61).

9. As per claim 4, Snell teaches which the receiving step Includes receiving signals carrying information representing actual physiologic phenomenon within the patient as sensed by at least one medical device located on or at least partially in the patient's body (Snell; Col. 4, lines 41-61).

10. As per claim 5, Snell teaches the receiving step Includes receiving signals carrying information representing actual physiologic phenomenon within the patient as sensed by a plurality of medical devices located on or at least partially in the patient's body (Snell; Col. 4, lines 41-61).

11. As per claim 6, Snell does not expressly teach the enabling step comprises providing a secure sign-in and validating an originator's security-related action prior to allowing access of the originator to the database information.

However this feature is an obvious variant of the Snell teachings. Snell does teach implementing appropriate security checks such as communications protocols, handshaking, and encryption in order to not compromise patient confidentiality (Snell; Col. 7, lines 51-54).

12. As per claim 7, Snell teaches the first data inputs provides intermediate information to enable further production of data representations enabling subsequent actions (Snell; Col. 4, lines 41-61).

13. As per claim 40, system for implementing a disease management service for a remote chronic patient with an implantable medical device wherein the service Includes multi-users of data and information exchange systems cooperating to provide the service for continuously managing the chronic patient's disease, health care and medical devices comprising:

a server hosting medical and physiological data collected from the implanted medical device of the patient (Snell; Col. 4, lines 42-61);

a physician station In data communications with the server (Snell; Col. 5, lines 6-16);

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a health care system Information network being in a bi-directional communication with the physician station and further having a data communication with the server (Snell; Col. 6, lines 42-50);

a disease management organization in bi-directional communications with said health care system information network (Snell; Col. 5, lines 6-16);

said server including at least one set of database of information concerning the patient wherein the database is structured to assist the disease management organization to manage the patient (Snell; Col. 5, lines 38-50).

Snell does not expressly teach providing such services for a fee and said server including means for enabling the database to communicate with at least one web-enabled web site and to receive web site originated signals requesting access to the database.

However these features are well known in the art. In particular, Dirienzo teaches a market place for continuously negotiated prices with control for certain medical services (Dirienzo; Col. 8, lines 31-37). It would have been obvious to add this feature to the Snell method with the motivation of having an open electronic marketplace for a medical service (Dirienzo; Col. 11, lines 50-60). Snell also teaches the transmission of data over various types of networks including, the Internet (Col. 6, lines 40-45).

Examiner respectfully submits that one of ordinary skill in the art would find a website was an obvious variant of the Snell teachings in order to permit recorded information pertaining to numerous patients to be shared among many programmers and also give physicians easy access to the data (Snell; Col. 4, lines 10-15).

14. Claims 8, 12-13, 18-21, 32, 33, 34, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell (6,249,705).

15. As per claim 8, Snell teaches internet-based method for a paid service to maintain connection of a remote implantable medical device configured patient to a database network and for medical device data exchange and processing comprising the steps of:

receiving in a substantially continuous manner at the database network site first data inputs uniquely representative of sensed physiologic information from a specific implanted medical device configuration of a patient using said implantable medical device configuration (Snell; Col. 4, lines 42-61);

Snell does not expressly teach:

providing a web-site in a web-enabled system, the web-site having a user interface which includes a sign-in input to enable access to a database network site associated with said web-enabled system;

receiving at the web-site second data inputs requesting access to representations of said first data inputs available at said database; and

enabling the originator of said second data inputs to have access to the database via the secure web site to view representations of said first data inputs.

However these features are obvious variants of the Snell teachings. Snell does teach implementing appropriate security checks such as communications protocols, handshaking, and encryption (Snell; Col. 7, lines 51-54). Examiner respectfully submits that one of ordinary skill in the art would find that a user interface including a sign-in input was an obvious variant of the Snell teachings with the motivation of not compromising patient confidentiality (Snell; Col. 7, lines 62-65).

Snell also teaches the transmission of data over various types of networks including, the Internet (Col. 6, lines 40-45). Examiner respectfully submits that one of ordinary skill in the art would find a website was an obvious variant of the Snell teachings with the motivation of permitting recorded information pertaining to numerous patients to be shared among many programmers and also give physicians easy access to the data (Snell; Col. 4, lines 10-15).

16. As per claim 12, Snell does not expressly teach the enabling step comprises providing a secure sign-in and validating an originator's security-related action prior to allowing access of the originator to the database information.

However this feature is an obvious variant of the Snell teachings. Snell does teach implementing appropriate security checks such as communications protocols, handshaking, and encryption (Snell; Col. 7, lines 51-54). Examiner respectfully submits that one of ordinary skill in the art would find that a user interface including a sign-in input was an obvious variant of the Snell teachings with the motivation of not compromising patient confidentiality (Snell; Col. 7, lines 62-65).

17. As per claim 13, Snell teaches the first data inputs provides intermediate information to enable further production of data representations enabling subsequent actions (Snell; Col. 4, lines 42-61).

18. As per claim 18, Snell teaches an internet-based method for a paid service to maintain data connectivity of a remote implantable medical device-configured patient to a database network and to enable rapid medical device data exchange and processing of certain conditions, comprising the steps of:

receiving in a substantially continuous manner at a database network site first data inputs uniquely representative of sensed physiologic information from a specific implantable medical device configuration of a patient using said implantable medical device configuration (Snell; Col. 4, lines 42-61); and

Snell does not expressly teach enabling the database network site to communicate with at least one web-enabled web site to automatically deliver representations of said first data inputs from said database when certain conditions are met.

However this feature is an obvious variant of the Snell teachings. Snell teaches the transmission of data over various types of networks including, the Internet (Col. 6, lines 40-45). Examiner respectfully submits that one of ordinary skill in the art would find a website was an obvious variant of the Snell teachings with the motivation of permitting recorded information pertaining to numerous patients to be shared among

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many programmers and also give physicians easy access to the data (Snell; Col. 4, lines 10-15).

19. As per claim 19, Snell teaches the step of enabling includes initiating automatic software analysis of the first data inputs to determine whether any sensed physiologic activity is abnormal (Snell; Col. 5, lines 18-36; Col. 5, lines 38-55).

20. As per claim 20, Snell teaches which the step of enabling includes initiating automatic software analysis of the first data inputs to determine actual values for any sensed physiologic activity (Snell; Col. 5, lines 18-36; Col. 5, lines 38-55).

21. As per claim 21, Snell teaches the step of enabling includes initiating automatic software analysis of the first data inputs to determine whether any sensed physiologic activity its indicative of a demonstrable or likely pattern of physiological activity (Snell; Col. 5, lines 18-36; Col. 5, lines 38-55).

22. As per claim 32, Snell teaches a computer implemented method for improved data management in the healthcare industry by increasing patient engagement with recommended healthcare delivery modalities, comprising the steps of:
providing an implanted medical device configured for automatic sensing of high relevance biologic data of the patient and transmitting that data, or portions thereof, to an information parser of the healthcare professional (Snell; Col. 4, lines 42-61);

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Snell does not expressly teach:

configuring a patient accessible electronic interface to receive signals representative of sensed high relevance biological data of the patient;

providing selectively programmable computer implemented rapid Interpretations of the sensed high relevance biologic data and, when indicated, electronically sharing with the healthcare professional the details of the sensed high relevance biological data without resort to personal contact or face to face meeting between the healthcare professional and the patient; and

providing information flow paths for the healthcare professional to further contribute to the knowledge database and patient engagement by offering the patient and a patient's designated advocate direct information about the high relevance biologic data thereby actively engaging the patient in a highly content rich yet efficient manner.

However, these features are obvious variants of the Snell teachings. In particular Snell teaches programmers located in individual physician offices, clinics, emergency rooms, ambulances, and hospital critical care units (Snell; Col. 5, lines 6–16). Examiner respectfully submits that by placing the programmers in these various locations that the interface could be accessible to patients. Snell also teaches a user interface for interacting with the physician *or other user* (Snell; Col. 6, lines 30-32). Thus, any type of use user (i.e. physician, patient, programmer) could interact with the physician over the network. Snell further teaches a report function (Snell Col. 7, line 40 to Col. 8, line 4). The reports can serve as “providing information flow paths” for the healthcare professional. One of ordinary skill in the art would find these to be obvious variation

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with the motivation of permitting recorded information pertaining to numerous patients to be shared among many programmers and also give physicians easy access to the data (Snell; Col. 4, lines 10-15).

23. Claim 33 repeats the limitations of claim 8 and the reasons for rejection are incorporated herein.

24. As per claim 34, Snell does not expressly teach said web-site further includes a proxy right access scheme to provide privileged access to a user's data by friends or family as programmed. However this feature is an obvious variant of the Snell teachings. Snell does teach implementing appropriate security checks such as communications protocols, handshaking, and encryption (Snell; Col. 7, lines 51-54). Examiner respectfully submits that one of ordinary skill in the art would find that a user interface including a sign-in input was an obvious variant of the Snell teachings with the motivation of not compromising patient confidentiality (Snell; Col. 7, lines 62-65).

25. Claim 39 repeats limitations of claims 8 and 32 and the reasons for rejection are incorporated herein.

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Conclusion

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Linh-Giang Le whose telephone number is 571-272-8207. The examiner can normally be reached on 8 AM - 5PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-3600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LLe

Robert Morgan
Robert Morgan
Patent Examiner
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